

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
SHIELDS, HARPER & CO.)

Appearances:

For Appellant: James E. Hammond of Skinner & Hammond
Certified Public Accountants.
For Respondent: James J. Prditto, Franchise Tax Counsel;
William L. Toomey, Jr., Assistant Franchise
Tax Counsel.

O P I N I O N

This appeal is made pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of Shields, Harper & Co. to a proposed assessment of additional tax in the amount of \$658.49 for the taxable year ended December 31, 1938, based upon the income of the company for the year ended December 31, 1937.

During the income year of 1937, the president and sole stockholder of the Appellant forgave the Appellant an indebtedness of \$24,464.80 which indebtedness represented accrued salary due and owing to, and traveling expenses advanced by, said president and sole stockholder, Mr. L. R. Weislander. During the six prior taxable years Appellant had taken deductions totalling \$24,135.61 for salary earned by said president but not paid to him and for traveling expenses advanced by him but not repaid to him.

Section 8(o) of the Bank and Corporation Franchise Tax Act as amended in 1937 (Statutes of 1937, page 2326) reads as follows:

"If the bank and corporation is allowed a deduction under this section for an obligation and is subsequently discharged from liability therefor without having made full payment thereof, the amount of such obligation shall constitute income to the bank or corporation in the year in which the liability is discharged. If an obligation is not paid within four years of the date on which incurred, it shall be presumed that the bank or corporation has been discharged from liability therefor unless it can be established that (1) the obligation was incurred in ,

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good faith, (2) the bank or corporation still intends to satisfy the obligation in full, and (3) the obligation has not been paid either because the bank or corporation was financially unable to make payment, or because it was unable to locate the creditor, or because the obligation is not due."

The Franchise Tax Commissioner in his Notice of Action Upon Taxpayer's Protest held that \$24,135.61 of the aforementioned item of \$24,464.80 was income. Appellant has cited several federal cases involving federal laws which, however, did not contain a provision similar to Section 8(o). Those cases are, therefore, not controlling. Under Section 8(o) said sum of \$24,135.61 was taxable income for the taxable year ended December 31, 1938, and we must hold that the Commissioner acted properly in overruling the Appellant's protest to the proposed additional assessment.

O R D E R

Pursuant to the views expressed in opinion of the Board on file in these proceedings, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the action of Chas. J. McColgan, Franchise Tax Commissioner, in overruling the protest of Shields, Harper & Co. to a proposed assessment of an additional tax in the amount of \$648.49 for the taxable year ended December 31, 1938, based upon the income of said company for the year ended December 31, 1937, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby sustained.

Done at Sacramento, California, this 14th day of June, 1943,
by the State Board of Equalization.

R. E. Collins, Chairman
Wm. G. Bonelli, Member
J. H. Quinn, Member
Geo. R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary